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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. BRENT MASON, Defendant and Appellant.	A140618 (Contra Costa County Super. Ct. No. 1014604)

Defendant Brent Mason appeals from an order denying, with prejudice, a motion pursuant to Penal Code section 17, subdivision (b)(3),[1] to reduce his felony conviction, pursuant to a plea deal, of statutory rape (Pen. Code, § 261.5, sub. (d)) to a misdemeanor.[2] Defendant does not, on appeal, challenge the denial of his motion, only the "with prejudice" determination.

The Attorney General agrees dismissal "with prejudice" was not warranted in this case.

Defendant made a showing that since his conviction he has been sober for eight years, completed almost five years of therapy and completed his probationary period. He submitted a number of letters in his support. In 2011, a report by the Sex Offender

[1] All further statutory references are to the Penal Code.

[2] Defendant, who was a teacher and married to the half sister of the victim, was accused of providing drugs to and sexually molesting the victim while she was between 13 and 16 years old. The victim then ran away from home and was kidnapped and raped in Utah. The victim's parents stated the abuse by defendant came to light while the victim was in counseling following the out-of-state assault.

Treatment Specialist concluded he presents "a very low risk of re-offense." Probation recommended against a section 17, subsection (b) reduction "at this time," in light of "information" in the report (including the circumstances of the crime and his performance on probation) and the fact he had been off probation for only three months.

The trial court punctuated its denial "with prejudice" by stating it was "appalled" at defendant's participation in the Boy's and Girl's Club. However, defendant, who has two children which he is allowed to see once a week with others in attendance, submitted a letter from a former Executive Director of the club stating his activities were limited to fund raising and he was never on club premises when children were scheduled to be present. The court also noted defendant's probation violation three months after he was placed on probation, that he had not accurately reported his work schedule, and for which he was removed from the county's electronic monitoring program. As a result of the violation, additional "sex offender" terms and conditions were imposed, including restrictions on his socialization. Six months later, in April 2009, defendant admitted a violation of that new condition, dating a woman with a nine-year-old daughter. Defendant served 120 days of jail time. There were no further probation violations.

As the Attorney General points out, claims for rehabilitative relief should rarely be denied with prejudice. (*People v. Lockwood* (1998) 66 Cal.App.4th 222, 230.) The law is meant to incentivize rehabilitation, and denials of rehabilitative relief should occur only when the circumstances are " 'so severe [and] deliberate' as to constitute extreme circumstances." (*Lyons v. Wickhorst* (1986) 42 Cal.3d 911, 917.) We agree with the Attorney General the record here does not rise to that level, and the denial of defendant's section 17, subdivision (b), motion "with prejudice" should be modified to denial "without prejudice."

DISPOSITION

The denial of defendant's section 17, subdivision (b), motion "with prejudice" is hereby modified to a denial "without prejudice," and as modified is affirmed.

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Banke, J.

We concur:

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Humes, P. J.

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Dondero, J.